

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)	
)	
MOBEX NETWORK SERVICES, LLC)	File No. 0001042087
)	
for Modification of the Licenses for)	
Automated Maritime Telecommunications)	
System Call Sign WHV733)	

ORDER

Adopted: June 23, 2003

Released: June 25, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* On October 31, 2002, Warren C. Havens (Havens) requested that we deny the above-captioned Mobex Network Services, LLC (Mobex) application to modify its license for Automated Maritime Telecommunications System (AMTS) station, Call Sign WHV733, in order to relocate certain facilities. For the reasons that follow, Havens's petition is granted to the extent set forth below.

2. *Background.* AMTS stations provide automated, integrated, interconnected ship-to-shore communications similar to a cellular phone system for tugs, barges, and other maritime vessels.¹ In establishing the rules authorizing AMTS stations, the Commission considered the potential for interference to television reception, particularly Channels 10 and 13 because of the proximity of AMTS frequencies to these television channels, and conditioned the operation of AMTS coast stations on the requirement that no harmful interference be caused to television reception.² Under the Commission's Rules, an applicant proposing to locate an AMTS station within 129 kilometers (80 miles) of a Channel 10 television station and/or 169 kilometers (105 miles) of a Channel 13 television station must submit an engineering study demonstrating the means used to avoid interference within that particular television station's Grade B contour.³ The study must include a description of the interference contour and the method used to determine that contour, along with a statement that provides the number of residences within the contour.⁴ Where there are at least one hundred residences within both a proposed AMTS station's predicted interference contour and a television station's Grade B contour, the AMTS applicant must

¹ See Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), *First Report and Order*, GEN Docket No. 88-732, 6 FCC Rcd 437, 437 ¶ 3 (1991) (*AMTS First Report and Order*).

² 47 C.F.R. § 80.215(h); Amendment of Parts 2, 81 and 83 of the Commission's Rules to Allocate Spectrum for an Automated Inland Waterways Communications System (IWCS) along the Mississippi River and Connecting Waterways, *Report and Order*, GEN Docket No. 80-1, 84 FCC 2d 875, 897-98 ¶ 81, *on recon.*, *Memorandum Opinion and Order*, GEN Docket No. 80-1, 88 FCC 2d 679 (1981).

³ 47 C.F.R. § 80.475(a)(1); *see AMTS First Report and Order*, 6 FCC Rcd at 437 ¶ 5.

⁴ 47 C.F.R. § 80.215(h)(2).

(1) show that the proposed site is the only suitable location, (2) develop a plan to control any interference its operations cause within the Grade B contour, and (3) agree to make any necessary adjustments to affected television receivers to eliminate such interference.⁵ Applicants that are required to submit an engineering study must give written notice of the application to all affected television stations.⁶

3. In the *Fourth Report and Order and Third Further Notice of Proposed Rule Making* in PR Docket No. 92-257, the Commission concluded that an AMTS licensee did not have to file an application or engineering study if the proposed station was a fill-in station (*i.e.*, its predicted interference contour did not encompass any land area beyond the composite interference contour of its existing system),⁷ but that AMTS licensees must give written notice to television stations which may be affected at least fifteen days before the fill-in station is put into operation.⁸ The Commission also concluded that although it would suspend the acceptance of applications for new AMTS licenses, it would continue to accept and process modification applications that propose neither to expand a station's (or AMTS system's) service area or to obtain additional spectrum.⁹

4. On November 8, 2000, before the Commission suspended processing of applications for new AMTS licenses, Mobex was granted a license, under Call Sign WHV733, for a four-station AMTS operation in North Carolina. Mobex submitted an engineering study with each application for the four-station system.¹⁰ On September 27, 2002, in a modification application, Mobex requested authorization to relocate two of those stations (Fayetteville to Rockfish, North Carolina, and Old Racetrack Road in Hillsborough to Old South Drive in Hillsborough, North Carolina). Mobex submitted engineering studies showing that the proposed relocations would not expand the system's service area or obtain additional spectrum.¹¹ On October 2, 2002, the modification application was accepted for filing.¹² On October 31, 2002, Havens petitioned to deny the application.¹³ On October 16, 2002, Mobex requested that the construction deadline of Call Sign WHV733 be extended, so that it would have additional time to

⁵ 47 C.F.R. § 80.215(h)(3); *see* Fred Daniel d/b/a Orion Telecom, *Memorandum Opinion and Order*, 14 FCC Rcd 3909, 3910 ¶ 4 (WTB PSPWD 1999).

⁶ 47 C.F.R. § 80.475(a)(2). Last year, the Commission eliminated from Section 80.475(a) of its rules the requirement that AMTS applications demonstrate continuity of service to a waterway or substantial navigational area. *See* Amendment of the Commission's Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6737 (2002) (*Fifth Report and Order*); *compare* 47 C.F.R. § 80.475(a) (2001) *with* 47 C.F.R. § 80.475(a) (2002). The Commission intended to retain without change the requirement that AMTS applicants give written notice to affected television stations of the filing of an application requiring an engineering study. *See Fifth Report and Order*, 17 FCC Rcd at 6706 ¶¶ 45-46. Following publication in the Federal Register, however, paragraphs (1) and (2) were erroneously dropped from the published version of Section 80.475(a). The Commission will correct this oversight in an upcoming rulemaking item.

⁷ Amendment of the Commission's Rules Concerning Maritime Communications, *Fourth Report and Order and Third Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 15 FCC Rcd 22585, 22593 ¶ 12 (2000).

⁸ *Id.* at 22593 ¶ 12; 47 C.F.R. § 80.475(b).

⁹ *Id.* at 22621-22 ¶¶ 76-77.

¹⁰ *See* File Nos. 853314, 853315, 853316, and 853317.

¹¹ Explanation of Modification, File No. 0001042087 (filed Sep. 27, 2002).

¹² *Public Notice*, Report No. 1297 (rel. Oct. 2, 2002).

¹³ On November 8, 2002, Mobex filed an opposition. On November 26, 2002, Havens filed a reply.

complete the construction of the two stations that it seeks to relocate.¹⁴ The extension request was granted on October 21, 2002.¹⁵

5. *Discussion.* Mobex contends that Havens, who is not licensed to operate any AMTS system that is in direct competition with its proposed Hillsborough and Rockfish AMTS stations, lacks standing to file this petition.¹⁶ Havens argues that under his Location and Monitoring Service (LMS)¹⁷ geographic area licenses he is authorized to serve parts of North Carolina wherein he potentially can compete with AMTS Call Sign WHV733.¹⁸ Mobex argues that LMS and AMTS provide different services and therefore, are not competitive.¹⁹ We agree with Havens that he has standing to file the subject petition. We concur with Haven's assertion that in certain instances, the need to locate and monitor mobile radio units could be equally met by AMTS or LMS. In view of the fact that there is service area overlap, and because it is conceivable that AMTS can compete with LMS for customers who need to locate and monitor mobile radio units, we conclude that Havens has standing in the instant matter. Because standing in this case is based on Havens's status as a competitor in the same market that Mobex operates, Havens does not need to demonstrate that he will suffer a specific injury from grant of the modification application.²⁰

6. As indicated, Havens argues that Mobex's modification application is defective because Mobex did not submit an engineering study, or notify affected television stations.²¹ We agree. Based on the record before us, it appears that Mobex did not submit engineering studies demonstrating the means used to avoid interference to television reception, and did not give written notice of the application to affected television stations. Mobex contends that its proposed Hillsborough and Rockfish AMTS stations are fill-in stations and therefore, it is not required to submit an engineering study or provide notification to affected television stations.²² Contrary to what Mobex contends, its proposed stations are not fill-in stations (*i.e.*, new stations that fill-in existing systems); rather, they are existing stations that Mobex is seeking to relocate. As Havens notes, if these proposed stations were indeed fill-in stations, rather than modifications of existing stations, Mobex would not have been required to file the captioned application.²³ Although we will continue to process and accept applications that seek to modify existing AMTS stations, so long as those applications propose neither to expand a station's (or AMTS system's) service area or to obtain additional spectrum, in the absence of a waiver request, we can only grant those

¹⁴ Request for Extension of Time, File No. 0001060314 (filed Oct. 16, 2002).

¹⁵ On April 30, 2003, Mobex requested a further extension because the Commission had not yet acted on its modification application. Request for Extension of Time, File No. 0001293111 (filed Apr. 30, 2003). The further extension was granted on May 29, 2003.

¹⁶ Opposition at 1-2. Mobex also argues that Havens failed to comply with the 47 C.F.R. § 1.939(d) requirement that allegations of fact in a petition to deny be supported by affidavit. Opposition at 3. No affidavit is needed in this case, however, because all of the operative facts – largely regarding what Mobex filed in 2000 and 2002 – are of the type of which we can take official notice. *See* 47 C.F.R. § 1.939(d).

¹⁷ LMS provides the use of non-voice signaling methods to locate or monitor mobile radio units. LMS systems may transmit and receive voice and non-voice status and instructional information related to such units. *See* 47 C.F.R. § 90.7.

¹⁸ Petition at 1; Reply at 1. We note that Mobex's proposed Hillsborough AMTS station is located in Basic Economic Area 019 where Havens is licensed to use LMS Channel Block A (Call Sign WPOJ882).

¹⁹ Opposition at 2.

²⁰ *See* American Mobilephone, Inc. and Ram Technologies, Inc., *Order*, 10 FCC Rcd 12297, 12298 ¶ 8 (1995).

²¹ Petition at 1-2.

²² Opposition at 3-4.

²³ Reply at 3.

applications that are in full compliance with the Commission's rules. As indicated, only fill-in stations are exempt from the AMTS engineering study and broadcast notification requirements. There is no exception to these requirements for relocating licensed stations that could alternatively qualify as fill-in stations. The proposed new station locations are within the distances to television stations that trigger the engineering study and broadcaster notification requirements. Because Mobex's application to modify two existing AMTS stations does not include an engineering study, nor a list of the affected television stations that received notification of the filing of the application, we find that it is defective and therefore will be dismissed.²⁴

7. Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 80.215(h) and 80.475 of the Commission's Rules, 47 C.F.R. §§ 80.215(h), 80.475, that the petition to deny filed by Warren C. Havens on October 31, 2002 IS GRANTED to the extent set forth above.

8. IT IS FURTHER ORDERED pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 80.215(h) and 80.475 of the Commission's Rules, 47 C.F.R. §§ 80.215(h), 80.475, that the application filed by Mobex Network Services, LLC on September 27, 2002 SHALL BE DISMISSED WITHOUT PREJUDICE.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

²⁴ We note that this *Order* does not bar Mobex from filing another modification application of Call Sign WHV733 so long as the application proposes neither to expand a station's or the system's service area or to obtain additional spectrum, and is in full compliance with the Commission's rules.